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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT FOR
THE CENTRAL DISTRICT OF CALIFORNIA

DENSO CORPORATION, a Japanese
corporation

Plaintiff,

v.

Domain Name <denso.com>,

Defendant.

Case No. 2:14-cv-01050 LB
Hon Laurel Beeler

DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION
FOR ENTRY OF DEFAULT

NOW COMES Defendant <denso.com> (hereinafter "Defendant") by and
through its counsel, Enrico Schaefer and for its Response to Plaintiff's Motion for
Entry of Default, states as follows:

1 1. Defendant admits Plaintiff's allegations in Paragraph 1 concerning
2 the date of the filing of the original Complaint.

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4 2. Defendant admits that Densoft Consultancy Services Ltd. (DCS)
5 filed a Motion to Dismiss and a Motion to Appoint Counsel and Vacate the Case
6 Management Conference.

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8 3. Defendant admits that Plaintiff filed its First Amended Complaint on
9 September 10, 2014 (Dkt 26), and further notes that Plaintiff also filed a
10 contemporaneous Motion for waiver of service requirements by publication in
11 electing to proceed *in rem* in an Anti Cybersquatting Protection Act ("ACPA")
12 claim against the Defendant domain name.

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14 4. Defendant admits the Court issued its Order on September 19, 2014
15 striking DCS's Motions as improperly filed, but additionally, the court also denied
16 Plaintiff's Motion to Waive Service by Publication under USC§1125(d)(2)(A)
17 finding that Plaintiff's Motion to Waive Service by Publication was premature
18 pending a determination whether to move forward with the case as an *in rem*
19 proceeding or not. (See Court Order of September 19, 2014, Dkt 30).

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21 5. Defendant admits that on November 5, 2014 Plaintiff filed a Motion
22 for a Finding of In Rem Jurisdiction (Dkt 32) and requested that in the event the
23 matter proceeded in personam, it requested the Court default DCS.

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25 6. Defendant admits that on December 17, 2014 the court granted
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1 Plaintiff's Motion to proceed *in rem* over the Defendant domain name, but notes
2 further Plaintiff has not renewed its Motion for waiver of service by publication to
3 effect service in rem pursuant to USC §1125(d)(2)(A) of the ACPA and which
4 was previously denied by the court as premature and without prejudice. (See
5 Docket entry Number 30). Additionally, any formal appearance on behalf of the
6 domain filed in advance of this Court's determination to proceed *in rem* could
7 have been construed as a waiver of in personam jurisdiction by the registrant.
8 (See *Cable News Network L.P. v CNNews.com*, 177 F. Supp 2d 506 (E.D. Va
9 2001) where the domain registrant appeared in an *in rem* proceeding as respondent
10 non-party to defend the ACPA claims on behalf of the Defendant domain but
11 without waiving in personam jurisdiction.)
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16 7. Defendant denies that it has failed to otherwise respond to Plaintiff's
17 First Amended Complaint in that counsel for Defendant Enrico Schaefer sent a
18 letter to the court on December 18, 2014, stating that counsel would be filing an
19 Appearance and then filing his Motion for admission Pro Hac Vice in order to
20 represent the interests of the Defendant in this matter. To the extent Plaintiff
21 argues that Defendant counsels' appearance in the case may provide a waiver of
22 any further requirement of service by publication in this *in rem* matter and
23 triggering a time period from which to respond to the First Amended Complaint,
24 Defendant notes that the Answer filed contemporaneously herein is well within
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1 the time to respond provide by the Court rules. Thus any request for default, to the
2 extent all other procedural requirements were met, is nevertheless premature.

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4 8. Defendant denies that Plaintiff has satisfied the requirement for entry
5 of a default with respect to the Defendant domain name as indicated in this
6 response, and that Defendant has clearly expressed that its intention of entering
7 the case and defending the matter by filing its appearance and now its answer to
8 the First Amended Complaint contemporaneous with this response to the motion.
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10
11 9. Defendant admits that it is not an infant, incompetent individual or
12 member of the military, but denies that those are proper requisites in requesting a
13 default in an *in rem* proceeding under the ACPA (Anti-Cybersquatting Protection
14 Act), and further avers the counsel for Plaintiff made no contact with counsel for
15 the Defendant prior to filing its Motion even though an appearance had been filed.
16 In fact, Plaintiff conveniently fails to note the appearance by counsel or a viable
17 argument that the answer to the compliant is overdue as part of its motion.
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19
20 10. Defendant neither admits nor denies Plaintiff's intentions concerning
21 moving forward with the Complaint, nevertheless, Defendant domain name
22 intends to defend against the allegations that were made in Plaintiff's First
23 Amended Complaint against Defendant Domain Name.
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25
26 WHEREFORE, Defendant <denso.com> respectfully requests that the court
27 deny Plaintiff's Motion to Enter Default with respect to Defendant domain.
28

Respectfully submitted this 7th day of January, 2014.

/s/ Enrico Schaefer
Enrico Schaefer (*Pro Hac Vice*)
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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of January, 2014, I electronically filed the foregoing Defendant's Response to Plaintiff's Motion for Entry of Default with the Clerk of the Court using the CM/ECF System.

/s/ Enrico Schaefer
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